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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,883	12/03/2003	Jack S. Rosen	KH0694US (#90636)	5360
7590	06/20/2005		EXAMINER	
D. Hochberg, D. Peter Hochberg Co., L.P.A. 6th Floor 1940 East 6th Street Cleveland, OH 44114			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 06/20/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/726,883	ROSEN, JACK S.	
	Examiner Josiah Cocks	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 April 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 10 and 11 is/are allowed.
 6) Claim(s) 1-9 and 12-19 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 15 March 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 4/7/2005 is acknowledged.

Drawings

2. The drawings filed 3/15/2004 are accepted by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,832,915 to Skidmore et al. ("Skidmore") in view of U.S. Patent No. 5,909,729 to Nowicke, Jr. ("Nowicke").

Skidmore discloses in Figs. 1-12 an invention similar to that described in applicant's claims 1-7 and 12-17. In particular, Skidmore discloses a combination fireplace and grill that includes a base (21), a removable fire pit central housing in the form of a foraminous screen (38), a lid (23), food support grid (36, 37) and heat source/combustible material support (35) (see col.

3, lines 58-65). The device of Skidmore is operable as both a fire pit and a barbecue grill (see col. 3, lines 66-67) and includes the necessary supports for each use.

Skidmore does not disclose the use of a smoker attachment in order to use the device in a smoker mode.

Nowicke teaches a barbecue grill in the same field of endeavor as Skidmore. In Nowicke a grill base (10) includes an optional smoker attachment (15) in the form of a central housing with a cylindrical, removable, solid/substantially impervious wall (see Fig. 2). The smoker attachment allows the grill to be converted for use as a food smoker.

Therefore, in regard to claims 1-7 and 12-17, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grill assembly of Skidmore to incorporate the smoker attachment of Nowicke as smoker attachments are recognized in the art to desirably function to enhance the flavor of food products used in a grill assembly (see Nowicke, col. 1, lines 50-52).

5. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skidmore in view of Nowicke as applied to claims 1 and 12 above, and further in view of U.S. Patent No. 3,915,145 to Tomita ("Tomita").

Skidmore in view of Nowicke teach all the limitations of claims 8 and 18 except that the base includes an accessible door.

Tomita teaches a barbecue grill in the same field of endeavor as Skidmore. In Fig. 10 of Tomita a base portion (132) includes a door (189).

Therefore, in regard to claims 8 and 18, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the grill base of Skidmore to incorporate the door of Tomita for the desirable purpose of allowing access to the base to permit insertion of a combustible fuel (see Tomita, col. 8, lines 23-25).

6. Claims 9 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Skidmore in view of Nowicke as applied to claims 1 and 12 above, and further in view of U.S. Patent No. 5,960,788 to Bach et al. ("Bach").

Skidmore in view of Nowicke teach all the limitations of claims 9 and 19 except possibly for a foraminous door in the fire pit housing.

Bach teaches a portable outdoor fireplace that includes a foraminous screen assembly (56) similar to that shown in Skidmore. The screen of Bach includes a foraminous door (92).

Therefore, in regard to claims 9 and 19, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the screen of Skidmore to incorporate the door of Bach to desirably allow access to the insertion of the screen assembly (see Bach, col. 5, lines 37-45).

Allowable Subject Matter

7. Claims 10 and 11 are allowed.

8. The following is a statement of reasons for the indication of allowable subject matter:
The prior art does not teach or suggest the combination barbecue, smoker and fire pit assembly having the combination of structural features and relationships recited in claims 10 and 11.

Response to Arguments

9. Applicant's arguments filed 4/7/2005 have been fully considered but they are not persuasive.

Applicant argues that Skidmore and Nowicke are not properly combinable because Skidmore has a base with angled sidewalls and a flat bottom while Nowicke has a hemispherical base. However, the examiner is not relying upon the structure of the base of Nowicke to modify the primary reference of Skidmore. Instead, Nowicke is cited to show the use of a smoker attachment in the art. Accordingly, applicant's argument is not considered relevant to the combination proposed by the examiner.

Applicant also argues that none of the references relied upon show a heat source support that is movable between an upper and lower position in the base of the assembly. First it is noted that the heat source support (35) of Skidmore is clearly movable with respect to the base (see Fig. 2). This support would therefore be capable of movement to any position and meets the limitation of a heat source support that is movable appearing in applicant's claims.

Applicant also argues that the prior art relied upon does not show an impervious smoker central housing that is removable from the base. However, as noted above, the smoker housing/sleeve (15) of Nowicke is clearly substantially impervious. Further, this housing/sleeve is described as an "adapter" for barbecue grills, the base of the grill of is described as being

arranged to “receive” the housing/sleeve, and the housing/sleeve is described as being handles separately from the grill base (see Nowicke, col. 3, lines 6-10). Accordingly, a person of ordinary skill in the art would understand this housing/sleeve to be a substantially impervious central housing that is removable from the base as recited in applicant’s claims.

Therefore, the examiner considers that applicant’s claims 1-9 and 12-19 do not read over the prior art of record.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM

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to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
June 15, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749